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EXAMINER

BOS, STEVEN J

ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/744,237</b>	Applicant(s) <b>Cristol</b>
	Examiner <b>Steven Bos</b>	Art Unit <b>1754</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Mar 24, 2003.

2a)  This action is **FINAL**.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 7-14 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 7-14 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 24, 2003 has been entered.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because in the specification example 1, 100 is referred to as overflow from PT whereas Fig. 1 shows it to be an underflow. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: M2 shown in Fig. 1 is not described by instant example 1 of the prior art figure of Fig. 1. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: in example 3 reference is made to "An" which is not shown in Fig. 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: in Fig. 2 reference number 10 is shown but is not described in either example 2 or 3. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: in Fig. 2 reference letter "V". A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The amendment filed August 13, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: in the Marked-up copy on pg. 3, "i.e. the cumulative percent finer than  $X \mu\text{m}$  or CPFT  $X \mu\text{m}$ "; on pg. 5,6,7,8,9,10,11,12,14,15,17,18,19, "CPFT"; on pg. 9, "observing values of CPFT  $X_1 \mu\text{m}$  enables to anticipate a change in CPFT  $X_2 \mu\text{m}$  where  $X_2$  is greater" and "the end of crystal growth phase" and "feed tanks"; on pg. 11, "greater"; on pg. 12, "350 g/ aluminate liter), measuring CPFT  $X_1 \mu\text{m}$  with  $X_1 = 20 \mu\text{m}$  is sufficient" and "/ aluminate"; on pg. 14, "/ aluminate"(each occurrence) and "feed tanks series"; on pg. 15, "feed tanks series" and "/ aluminate" and "injected at the entry of feed tanks series"; on pg. 16, "/ liter" and "/ aluminate"(both occurrences) and "has a solid content about 350 g / aluminate" and "of feed tanks series"; on pg. 17, "injected at the entry of the feed tanks series" and "the exit of feed tanks series"; on pg. 18, "/ liter" and "/ aluminate"; on pg. 19, "feed tanks

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series, the slurry 5 has a solid content" and "/ aluminate" and "g/ aluminate liter" and in the abstract, "CPFT" and the other changes which correspond to the new matter explained above.

Applicant is required to cancel the new matter in the reply to this Office Action.

The abstract of the disclosure is objected to because it is confusing and ungrammatical. Correction is required. See MPEP § 608.01(b). It is also unclear as to which abstract is to be used since now there are two abstracts because there were no instructions to cancel the original abstract. The second abstract is objected to as containing new matter as described above.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 7, "cumulative percentage of alumina hydrate ... defined as CPFT X2" is new matter.

In claim 7, "determining a relationship R ... variations in CPFT X2" is new matter.

In claim 7, "measuring CPFT X2 ... reaches an updated trigger threshold" is new matter.

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The limitations of each of claims 8,9,11,14 are new matter.

In claim 13, "wherein said calibration step comprises ... permissible variation of values of CPFT X2" is new matter.

Claims 7-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In the instant specification, there is no description or enablement for "determining the relationship R between CPFT X1 and later changes in CPFT X2" nor for "defining upper and lower trigger thresholds of CPFT X1 which correspond to maximum permissible variations in CPFT X2". How is the relationship R determined? It does not appear to be based on CPFT X1 and CPFT X2 as is instantly claimed since the instant specification states on pg. 7 that it is based on  $\% < X_2(t)$  and  $\% < X_1(t - t)$ .

Also, there is no enablement for "controlling the circuit, comprising measuring CPFT X2 and updating a correlation between CPFT X2 and the particles size of hydrate produced by the circuit ... an updated trigger threshold". The specification does not disclose what the "corrective action" is to "control the circuit" nor does it describe what is meant by "updating a correlation between CPFT X2 and the particle size of hydrate produced by the circuit".

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, “predetermined” is indefinite, Joseph E. Seagram & Sons, Inc. v. Marzall, 84 USPQ 180.

In claim 7,b, “regularly measuring” and “regularly updating” is indefinite as to what the metes and bounds of these are.

In claim 7,b, “regularly measuring CPFT X1 and a regularly updating of the relationship R” is ungrammatical and therefore confusing and indefinite.

In claim 7,b, “updating a correlation between CPFT X2 and the particle size of hydrate produced by the circuit” is indefinite as to what is considered to be updating since a correlation between CPFT X2 and the particle size of hydrate produced by the circuit was never previously performed in the process.

In claim 7,b, “causing corrective action to the slurry” is indefinite as to what is considered to be corrective action and what the function of the corrective action is.

In claim 9, “modifying comprises varying amounts of aliquots of pregnant aluminate liquor feeding a first agglomeration tank and a first feed tank, respectively” is indefinite as to what

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“respectively” is to refer to since the aluminate liquor is fed to both the first agglomeration tank and the first feed tank.

In claim 13, “the feed tank series”(each occurrence) lack(s) proper antecedent basis in the claim(s).

In claim 13, “daily measuring CPFT X1 in the slurry ... of the feed tank series” is indefinite since in the claim from which it depends, claim 7, “CPFT X1” has already been defined as the measurement versus time of the cumulative percentage of alumina hydrate particles circulating in the feed tanks in the circuit that are finer than X1  $\mu\text{m}$ ”.

In claim 13, “daily measuring CPFT X2 in the slurry ... of the feed tank series” is indefinite since in the claim from which it depends, claim 7, “CPFT X2” has already been defined as the measurement versus time of the cumulative percentage of alumina hydrate particles circulating in the feed tanks in the circuit that are finer than X2  $\mu\text{m}$ ”.

In claim 13, “a same accidental phenomenon on each curve” is indefinite as to what is considered to be an accidental phenomenon and as to what curve is being referred to here.

In claim 14, “the feed tank series”(each occurrence) lack(s) proper antecedent basis in the claim(s).

Applicant's arguments filed March 12, 2003 have been fully considered but they are not persuasive.

Applicant states that CPFT is not new matter.

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However CPFT refers to the cumulative percent finer than a certain particle size whereas the originally recited “% < X” does not refer to such cumulative percent but rather it just refers to the percentage of particles per se. The recitation of CPFT in Deville ‘536 does not mean that the instant newly recited CPFT is not new matter, nor does Deville ‘536 show that “% < X” is the same as CPFT. It is noted that in Deville ‘536 a Sedigraph apparatus is used to measure the CPFT whereas the instant “% < C” is measured by instruments that diffract laser beams or a COULTER or ELZONE.

Merely stating that “observing values of CPFT X1  $\mu\text{m}$  enables to anticipate a change in CPFT X2  $\mu\text{m}$  where X2 is greater” is not new matter does not mean that it is not new matter.

Applicant states that it is well known in the art that “pump-off” means the same thing as “the end of crystal growth phase” and therefore it is not new matter.

However there is no support of “the end of crystal growth phase” in the original specification. Furthermore it is not clear as to why there is a need to make the change if in fact the two phrases mean the same thing.

Applicant states that on pg. 12, the original French term used was “g/ l aluminate” or “grams per liter of aluminate”.

However the original specification recited “g of aluminate/ liter” or g of aluminate per liter. This is clearly different from the newly recited “g/ aluminate liter”.

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Instant Figs. 1 and 2 do not show that the feed tank series is point N of the process nor does this provide support for the change from "reinjected at the beginning of the crystal growth" to "injected at the entry of feed tanks series."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Bos whose telephone number is (703) 308-2537. The examiner is on the increased flexitime program schedule and can normally be reached between 8AM and 6PM Monday through Friday. The FAX No. for After Final amendments is 703-872-9311; for all others it is 703-872-9310. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

*SB*  
Steven Bos  
Primary Examiner  
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